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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/554,921	10/31/2005	Hiroshi Miura	280271US0X PCT	2311
22850	7590	03/31/2010		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
PALENIK, JEFFREY T				
ART UNIT		PAPER NUMBER		
1615				
NOTIFICATION DATE		DELIVERY MODE		
03/31/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/554,921

Applicant(s)

MIURA ET AL.

Examiner

Jeffrey T. Palenik

Art Unit

1615

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 March 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 17 March 2010. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☒ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Jeffrey T. Palenik/
Examiner, Art Unit 1615

/Carlos A. Azpuru/
Primary Examiner, Art Unit 1615

Continuation of 11, does NOT place the application in condition for allowance because: Following the interview dated 2 March 2010 Applicants have re-submitted their 132 Declarations (originally filed 6 July 2009), and have provided additional information concerning both the properties of the colloidal silica employed by Verhoff as well as properties of the silicon-based material which appears in the instant claims. As was stated in the interview, information submitted on behalf of these properties would be given consideration. Having fully reconsidered the rejections in light of the evidence, arguments and declarations, the Examiner respectfully maintains the rejection under 35 USC 103(a).

As was discussed in the interview, Applicants sought to distinguish over the art of record, primarily the Verhoff reference. At the outset, it appeared to the Examiners that a simple showing of the additional property data for the silicon material would suffice. However, in reconsidering the Verhoff reference, in light of Applicants' remarks and Declaration, the Examiner discovered that while Verhoff does preferably focus on the use of colloidal silica particles (e.g. material) as a silicon-based source, the use of porous silica material is also taught and suggested.

Applicants have clearly distinguished colloidal silica from porous silica, per the interview and subsequent remarks. Applicants have also remarked that the Verhoff reference teaches away on the grounds that the method of preparation involves milling of silicon material (e.g. employs milled bodies) in addition to the application of supercritical fluids.

First concerning the methods of preparation, the Examiner respectfully points out that the milling of the media bodies (e.g. silica particles) is not precluded by the instantly amended claims as the composition "comprises" (MPEP §2111.03) a porous silicon material, and the composition is produced by treating said mixture with a supercritical fluid. Otherwise stated, the claim does not exclude that the particles may be milled.

Secondly, concerning the porosity of the particles employed by Verhoff, despite the invention being preferably directed to using colloidal silica material (e.g. a non-porous form of silica), Verhoff further teaches that "[m]illing media bodies comprising biocompatible polymer can be roughened or ridged or made porous such as by leaching or compounding with soluble inorganic salts or soluble organic compounds then forming beads from the compounded polymer, and then leaching the soluble material to leave pores in the beads" (e.g., [0140], [0141], and [0143]). The porous beads formed can then be used as milling media bodies. As such, it appears that the reference suggests that non-porous porous silicon dioxide bodies may be used to produce porous bodies through chemical modification.

For these reasons, the rejection over claims 21-24 made under 35 USC 103(a) is maintained.